2024/2025 Law of Contract I Assignment

Question 1

"Parties to an agreement retain the commercial freedom to determine their own terms and no other person, not even the court can determine the terms of the contract between them."
Per Kekere-Ekun JSC in Delmas v Sunny Ositez Int'l Ltd. [2020] All FWLR pt. 1026 at 541 paras. B-C.
Explain the above with the aid of decided cases.

Answer

The statement by Kekere-Ekun JSC in **Delmas v Sunny Ositez Int'l Ltd.,** encapsulates a fundamental principle of contract law: freedom of contract and the concept of consensus ad idem (meeting of minds). This means that the law primarily facilitates agreements made by individuals or entities, rather than imposing terms upon them.

Parties' Commercial Freedom to Determine Terms:

The principle of freedom of contract allows parties to autonomously negotiate and agree upon the terms and conditions that will govern their relationship. It is crucial that for a contract to be enforceable, there must be a "mutual understanding of the essential terms and conditions of the agreement". This mutual understanding, known as consensus ad idem, is considered the hallmark of all contractual agreements.

In **Nigerian Port authorities LTD. V Lotus Plastic & Anor**, the Supreme Court explicitly held that "**parties are free to negotiate the terms of their relationship**." This directly supports the idea that parties, and not external entities like the court, are responsible for shaping the content of their agreements.
The emphasis on the parties' own intention is also evident in the definition of a contract provided by the Court of Appeal in **B.F.I GROUP v. BUREAU OF PUBLIC ENTERPRISES**. It states that a valid contract requires "**mutuality of purpose and intention**" and that "**The two or more minds must meet at the same point, event or incident. They must be saying the same thing at the same time. They must not be saying different things at different times. Where or when they say a different thing at different times, they are not id idem and therefore no valid contract is formed**." This highlights that the terms must originate from and be agreed upon by the parties themselves.

Courts Do Not Determine Contractual Terms:

The second part of the statement underscores the court's role as an enforcer of agreements, not a maker of them. Courts uphold what the parties have agreed to, provided it meets the necessary legal requirements for a valid contract, such as offer, acceptance, consideration, intention to create legal relations, and capacity.

Offer and acceptance reflect party-determined terms. That is, for an agreement to form, an offer must be precise and unequivocal, giving no room for speculation or conjecture as to its real content. Similarly, acceptance must be absolute and unqualified, plain, unequivocal, unconditional and without variance of any sort between it and the offer. If an acceptance introduces new terms, it becomes a counter-offer, which destroys the original offer, rather than forming a contract.
This principle is demonstrated in **Hyde v Wrench**, where the plaintiff's offer to buy an estate for £950, after an initial offer to sell for £1,000, was deemed a counter-offer that extinguished the original offer. The court would not force the original £1,000 agreement because the parties' minds had not unequivocally met on that specific term.
The concept of cross-offers further illustrates this point. In **Tinn v Hofman & Co**, two parties simultaneously offered to buy/sell iron on similar terms, but neither was aware of the other's offer. The court held that there was no contract because, despite identical terms, there was no communication of an offer and acceptance, and thus no meeting of minds. The court refused to construct a contract from two separate, unaccepted offers.

Another example of the court's non-interference with party-determined terms is seen in the doctrine of consideration. While consideration is an essential element of most contracts, its adequacy is generally irrelevant to the courts.
In **Chappel v Nestle**, **Lord Somervell** stated: "**A contracting party can stipulate for what consideration he chooses, A peppercorn does not cease to be a good consideration if it is established that The promisee does not like the pepper and throws away the corn."** This means that as long as something of value (however nominal) is exchanged, the court will not question whether it was a "fair" bargain, as that is for the parties to decide.
Similarly, **Thomas v Thomas** held that a court "**does not declare a contract invalid simply because one party got a better bargain than the other**."
Kaglo JCA in **Faloughi v Faloughi** concisely affirmed that "**once the consideration is some sort of value in the eyes of law, the court has no jurisdiction to determine whether it is adequate or inadequate**." These cases collectively show that the courts respect the terms agreed upon by the parties, even if they appear imbalanced, as long as there is no fraud, duress, or misrepresentation.

In conclusion, the statement by Kekere-Ekun JSC underscores the autonomy of contracting parties to establish their own terms through a genuine meeting of minds. The role of the court is not to rewrite or dictate the terms of an agreement, but to enforce the terms that the parties themselves have clearly and unequivocally chosen, reflecting the sanctity of contract and the commercial freedom embedded in contract law.

Question 2

“Put simply, a stranger to a contract cannot gain or be bound by it even if made for his benefits.’’ Per Ogbuinya, JCA in Multichoice Nigeria Ltd. v MCSN Ltd./ GTE [2020] All FWLR pt. 1063 p. 733 at 860; paras. A-C.
In view of the above assertion, discuss the doctrine of Privity of Contract and the exceptions thereto.

Answer

The statement, "Put simply, a stranger to a contract cannot gain or be bound by it even if made for his benefits", as articulated by Ogbuinya, JCA, concisely introduces the fundamental principle of privity of contract.

The Doctrine of Privity of Contract

The doctrine of privity dictates that a person cannot acquire rights or be subject to liabilities arising under a contract to which they are not a party. This means that a contract between Party A and Party B cannot directly affect the legal rights and duties of a third party, C. As **Lord Eldon** stated in **Dunlop Pneumatic Tyres v Selfridge Co**, a fundamental principle in English law is that "**only a person who is a party to a contract can sue upon it**." This concept was further emphasized in the case of **B.B Agupo & Sons v Orthopedic Hospital Board**, where **Kekere Ekun JSC** stated that "**only parties to a contract can maintain an action on it**". Even if a contract is made for the benefit of a third party, that third party is generally not permitted to sue or be sued on it because they have not provided consideration in support of the contract.

The rationale behind this doctrine is that **a contract binds only the party to it and cannot be enforced by or against a Person who is not a party even if the contract was made for his benefit.** Without this principle, it would be difficult to define the scope of contractual obligations and who is accountable for them.

Exceptions to the Doctrine of Privity of Contract

Despite its foundational role, the doctrine of privity has been criticized for potentially leading to hardship and injustice for third parties who genuinely rely on or are intended to benefit from a contract. Consequently, various exceptions have evolved to mitigate its strict application and accommodate the complexities of modern commercial transactions. These exceptions include:

Agency, that is, where an agent negotiates a contract on behalf of a principal, the principal, though not directly involved in the negotiation, can be bound by the contract and acquire rights under it. The relationship is generally regarded as being between the principal and the third party.

Contracts of Insurance, that is, insurance contracts commonly serve as an exception. For instance, the **Married Women Act (Section 11)** provides that if a man insures his life for the benefit of his wife and children (or vice versa), the woman or children are permitted to sue despite not being direct parties to the contract, and the principles of privity will not apply.

Covenants Running with the Land (Restrictive Covenants), that is, in cases involving land, restrictive covenants voluntarily accepted by a purchaser can bind subsequent acquirers of the land, provided certain conditions are met. This exception, notably consolidated in **Tulk v Moxhay**, requires that the original seller retains a portion of the land for the benefit or protection of which the covenant was taken.

Contracts for the Hire of Chattel, that is, a third party, who is not a direct party to an initial charter agreement, may be able to enforce rights if they have furnished consideration and the chattel is subsequently mortgaged or sold to another person who then acts inconsistently with the original agreement. The principle is that an acquirer with knowledge of a prior contract for the property's use should not act inconsistently with it to the detriment of the third person.

Interference with Contractual Rights, that is, it is considered a legal wrong in common law (a tort) for a person to knowingly interfere with the contractual rights of others. This rule applies to both chattels and services and prevents third parties from unlawfully disrupting existing contractual obligations.

Restriction upon Price, that is while conditions generally do not run with goods as they do with land, there are situations where restrictions on resale prices might lead to an exception. For example, if a manufacturer (A) sells to a dealer (B) with a condition that retailers buying from B must not sell below a certain price, and a retailer violates this, A typically cannot sue the retailer due to lack of privity. However, this scenario is an example of when the rule of privity would be exempted, the court would address the issue despite the absence of direct privity.

Family Land (under customary law), that is, in the context of customary law, members of a family are entitled to bring an action to set aside a conveyance of family land if it was made without their consent, regardless of whether they were a direct party to the transaction.

Collateral Contracts, that is, a collateral contract arises when one party makes a promise to another party, and that other party then enters into a contract with a third party. In such a scenario, the second party may be able to enforce the original promise, as if it were a separate, collateral agreement.

Valid Assignment of Benefit in Favour of a Third Party, that is, a contract can transfer the benefit of that contract to a third party through a formal assignment process. This means the assignee receives the rights under the contract, even though they were not the original assignor.

Multilateral Contracts, that is, when a person or an unincorporated association enters a contractual relationship, other members might be unaware of their identity or have limited involvement. In such cases, the complexities of multilateral contracts can allow a third party to enforce rights that would otherwise be restricted by the privity doctrine.

These exceptions underscore the courts' approach to ensure fairness and prevent injustice, moving beyond a rigid interpretation of privity in specific circumstances while still upholding the general principle of contractual autonomy.

Question 3

Capacity to enter into a contract is an element of a contract which is capable of rendering the contract void, voidable and or unenforceable.
Examine the above statement with the aid of decided cases.

Answer

Capacity to enter into a contract is a fundamental element that determines the validity and enforceability of an agreement. As highlighted in the case of **Orient Bank v Bilante Intl**, for a contract to be valid, it must comprise five essential elements: offer, acceptance, consideration, intention to create legal relations, and capacity. These elements must be precise, unambiguous and plain.

The concept of capacity addresses the legal ability of parties to enter into binding agreements. Individuals are generally presumed to have full contractual capacity unless they belong to specific categories of persons who are afforded special protection due to their circumstances, which could lead to them being exploited or defrauded in contractual bargains. These protected groups include illiterates, lunatics, minors, and drunkards. The absence or limitation of capacity in a contracting party can render a contract void, voidable, or unenforceable depending on the specific circumstances and the category of the incapacitated person.

Illiterates

Illiteracy, particularly in underdeveloped societies, is a dominant factor that necessitates protective measures in contract law. To prevent exploitation, various mechanisms are in place, especially for written contracts.

Nigerian law includes specific provisions for the protection of illiterate contractors. **Section 2 of the Illiterates Protection Laws** mandates that any person writing a document on behalf of an illiterate person must sign their own name and address, indicating that the document correctly represents the illiterate's instructions. Furthermore, it must be read over and explained to the illiterate before their signature or mark is affixed. The primary objective of these laws is to protect illiterates from fraud. Strict compliance by the writer is obligatory. The courts, in cases like **S.C.O.A Zaria v. Okon** and **Ezegwe v. Awriou**, have affirmed the necessity of this strict compliance.

Non-compliance with these provisions can lead to various consequences, including a penalty fine. More importantly for contract validity:
Contracts are generally not enforceable at the instance of the writer. As stated in **UAC v Edems & Alaya** by **Smith J.,** any benefit derived by the writer from such a contract is **unenforceable against the illiterate**. The law is not intended to be a **weapon to cheat others**, as supported by **Kayode Es JCA** in **Lawal v. GB Olivant.** A contract may, however, be enforced at the instance of a third party.

Infants:
The law grants special protection to infants due to their perceived lack of maturity and judgment. At common law and under Nigerian law (governed by English law principles), the age of majority for contractual capacity is 21 years. This was settled in cases **Labinjoh v. Abake.** While customary law might define majority by puberty, the English rule of 21 prevails for contractual transactions.

As a general rule, contracts entered into by infants are generally not binding on the infant, but they are binding on the other party. This makes such contracts voidable at the infant's option. An infant can repudiate these contracts during infancy or within a reasonable period after attaining majority. If an infant repudiates, they escape obligations that have not accrued at the time of repudiation as held in **Steinberg v. Scala Leeds Ltd.**

Two types of contracts are exceptions and are absolutely binding on infants:
Contracts for Necessaries: These are agreements for goods or services essential for the infant's sustenance or suitable to their condition in life. The infant is obliged to pay a reasonable price, not necessarily the contract price. A watch, for instance, was considered a necessary for an undergraduate in **Peters v. Fleming.** However, goods for trading purposes are generally not considered necessaries as held in **Cowiern v. Niel's**.
Beneficial Contracts of Service: These include contracts for education, profession, or trade that are for the infant's overall benefit as held in **Clemens v. London**, **De Francesco v. Barnum**.

Under the **Infant Relief Act of 1874** (applicable in Nigeria), certain contracts are absolutely void:
Loans: An infant cannot be liable for a loan.
Unnecessary Goods/Luxuries: Money paid by an infant for unnecessary goods is void and recoverable by the infant.
Fraudulent Misrepresentation of Age: If an infant fraudulently misrepresents their age to induce an adult into a contract, equity may grant relief for the restoration of ill-gotten gains to the adult. However, this doctrine of restitution will not compel the infant to refund money or goods as it would amount to enforcing a void contract as held in **Leslie Ltd v. Shell**

Lunatics (Mentally Disordered Persons - MDPs)
Persons categorized as Mentally Disordered Persons (MDPs) also have limited contractual capacity.
Contracts for Necessaries: If an MDP enters into a contract for necessaries, they are generally bound to pay a reasonable price for them. This is supported by **Section 2 of the SGA 1893.**

For contracts not involving necessaries, an MDP will not be bound if two conditions are satisfied:
The MDP acted without knowledge of their mental conditio and the other party was aware of the MDP's incapacity at the time of contracting. If these conditions are met, the contract is voidable at the MDP's option.
When a contract is made with a MDP, Such contract shall be considered valid in situations where the other party was not aware of the incapacity, or where the MDP later ratifies the contract.

Drunkards
A person in a state of intoxication also has their contractual capacity limited.
If a drunk person enters into a contract while in a state of intoxication and their counterpart is aware of this, the contract shall be voidable at their option. This principle is supported in cases of **Mathews v. Baxter** and **Gore v. Gibson.**
A drunk person can approve the contract at their sober period, thereby making it binding. Similar to lunatics and infants, if the contract is for a necessary, the drunken person is obliged to pay a reasonable sum for it.

In summary, the principle of capacity is crucial to determining a contract's enforceability. While some agreements may appear valid on the surface, the presence of limited capacity in a party can fundamentally alter the contract's legal status, rendering it void, voidable, or unenforceable to protect vulnerable individuals.

Question 4

“The operation of the Pinnel’s case worked hardship and injustice to the defendant who would have believed and relied on the Plaintiff’s promise to forego the balance of the debt owed.’’
Discuss the above with the copious reference to equitable intervention.

Answer

The statement, "The operation of the Pinnel’s case worked hardship and injustice to the defendant who would have believed and relied on the Plaintiffs promised to forgo the balance of the debt owed," accurately reflects a significant criticism of this common law rule. This hardship led to the development of equitable intervention, primarily through the doctrine of promissory estoppel, as exemplified by the **High Trees'** case.

The rule in **Pinnel's Case (1602),** primarily applicable to the contractual duty to pay debts, established that **part payment of a debt will not amount to sufficient consideration** to discharge the entire debt. This means that even if a creditor promises to accept a smaller sum in full settlement of a larger debt, they could later sue for the remaining balance, because the debtor's payment of a lesser amount did not provide "new" consideration for the promise to waive the rest.

However, the rule in Pinnel's Case does allow for an exception: if the payment of a fractional part of the debt, as agreed by the promisee, is made **in addition to a new element**, it will amount to sufficient consideration. This new element could be paying at an earlier date, at a different location, or with a chattel, which would legally discharge the debt. Despite this minor concession, the rigidity of the rule often led to hardship and injustice for a defendant who relied on the plaintiff's promise to forgo the balance of the debt. Litigants frequently attempted to use the rule in Pinnel's Case to escape the full rigour of the law, sometimes proposing new elements that courts, like **Lord Denning** in **D&C Builders v Rees**, found insufficient to bypass the core principle.

Due to the hardship caused by Pinnel's Rule, Equity emerged with a doctrine to mitigate its harshness. This classical doctrine, known as **promissory or equitable estoppel**, serves as an exception to the general rule of consideration in contract law.

The principle was initially explored in **Jordan v Money**, where it was unsuccessfully attempted to apply to statements of intention rather than existing fact. However, it gained clearer definition and force in 1877 with **Hughes v Metropolitan Ry Co**. The rule was finally and officially established in the landmark case of **Central London Property Trust Ltd v High Trees House Ltd (1947).**

Facts of **High Trees' Case**: During World War II, Central London Property Trust (plaintiffs/landlords) leased a property to High Trees (defendant/tenants). Due to the war, the property suffered from a lack of occupancy, affecting its value and rental potential. The plaintiffs agreed to accept a reduced rent amount from the defendant for the duration of the war. After the war, the property's value and rental potential significantly increased. The plaintiffs then sought to claim the full rental amount, including arrears for the period of reduced rent. The defendant asserted that the plaintiffs were estopped from claiming the full rent due to their previous agreement for reduced rent.

The court, in its decision, established the **doctrine of promissory estoppel**. Lord **Denning** held that **when a party makes a clear and unequivocal promise to another party, intending for the other party to rely on that promise, and the other party does rely on it to their detriment, the party making the promise is estopped from going back on their promise.**
In the context of **High Trees' case**, the plaintiffs were estopped from claiming the full rent owed for the period they had agreed to the reduction because they had made a promise to accept a reduced rent, and the defendant had relied on that promise.

It is important to note that promissory estoppel is meant to prevent injustice and unfairness when parties rely on promises made in good faith. Also, it does not create a new contract. Furthermore, promissory estoppel does not create a binding contract where one did not exist before; instead, it prevents the party who made the promise from asserting their strict legal rights to the detriment of the other party. Finally, it acts as a "shield" (a defense) rather than a "sword" (a cause of action).

In conclusion, the rule in **High Trees' case** (promissory estoppel) directly addresses and avoids the hardship and injustice that could arise from the strict application of common law rules like Pinnel's Case. It provides an equitable remedy that ensures fairness when one party acts upon a promise made by another, even in the absence of traditional consideration.

Question 5

“All the essential elements of a contract are autonomous and equal in the sense that each of them put together must be present in order for a valid and binding contract to come into existence.” A.R.M.C. Ltd. v Elizade Nigeria Ltd. [2020] All FWLR pt. 1058 p.1030, pp.1063-1064; paras. E-A.
Discuss.

Answer

The statement, "All the essential elements of a contract are autonomous and equal in the sense that each of them put together must be present in order for a valid and binding contract to come

into existence," highlights a fundamental principle in contract law: the cumulative and indispensable nature of its core components. A contract is universally understood as an agreement that the law will enforce or recognize as affecting the legal rights and duties of the parties involved. For such an agreement to be legally binding and enforceable, it must comprise several essential elements, none of which can be omitted without jeopardizing the contract's validity.

The **Supreme Court of Nigeria in B.F.I GROUP v. BUREAU OF PUBLIC ENTERPRISES (2008)** emphasized this by defining a contract as an agreement creating reciprocal legal obligations where there is "**mutuality of purpose and intention**" and "**the two or more minds must meet at the same point, event or incidents**". This meeting of minds, or consensus ad idem, is deemed the "**most crucial and overriding factor or determinant**". The principle that **all contracts are agreements but not all agreements are contracts** further underscores that an agreement only ripens into a contract when all necessary legal requirements are met.

The essential elements of a valid contract are:

Offer: An offer is a definite proposal made by one party (the offeror) to another (the offeree), expressing a willingness to enter into a contract on specific terms. It must be **precise and unequivocal**, leaving no room for speculation. The offeror must have finally declared his readiness to undertake an obligation upon certain conditions, leaving to the offeree the option of acceptance or refusal. For instance, an offer can be made to the whole world, as demonstrated in **Carlill v. Carbolic Smoke Ball Co.**, but a contract only forms with those who perform the stipulated conditions. Without a clear and definite offer, there is no basis for an agreement to begin. Preliminary steps in negotiations, known as Invitations to Treat, such as displaying goods in a shop window or advertisements, are not offers capable of acceptance but rather invitations to others to make offers.

Acceptance: Acceptance is the **unconditional agreement** to the exact terms of an offer. It is a reciprocal act or action that indicates the offeree's agreement to the terms conveyed by the offeror. Acceptance is crucial as it **underscores the bilateral nature of a contract**. A valid acceptance must be **communicated** to the offeror, meaning there must be an external manifestation of assent, not merely a mental or internal decision. Silence, as held in **Felthouse v. Bindley**, generally does not constitute acceptance.

Invalid forms of acceptance highlight the necessity of precise and unqualified assent:
A Counter Offer (**Hyde v. Wrench**) rejects the original offer and introduces new terms, requiring the original offeror's acceptance.
Conditional Acceptance, such as an agreement subject to contract, does not create a binding contract until the condition is met.

Cross-Offers occur when two parties make identical offers to each other simultaneously and in ignorance of the other's offer, as in **Tinn v. Hofman & Co.;** no contract is formed because there is no acceptance, only two offers.
Acceptance in Ignorance of Offer means a person cannot accept an offer they are unaware of.

Consideration: This is an **essential element** without which a contract, unless made under seal, is generally unenforceable. Consideration refers to **something of value** that moves from the promisee, constituting **some right, interest, profit or benefit** to one party, or **some forbearance, detriment, loss of responsibility** suffered or undertaken by the other, as defined by **LUSH J.** in **Currie v. Misa**. The law requires consideration to be sufficient but not necessarily adequate, meaning courts are generally not concerned with the comparative value of the exchange, provided there is some economic value. As seen in **Chappel v. Nestle**, "**A peppercorn does not cease to be a good consideration if it is established that The promisee does not like the pepper and throws away the corn**". However, Past Consideration (something already done) and Moral Obligations (as clarified in **Eastwood v. Kenyon** and **Faloughi v. Faloughi**) do not constitute valid consideration.

Intention to Create Legal Relations: This element determines whether parties to an agreement intended for their promises to be legally binding and enforceable in a court of law. Its absence means "there is no contract".
In Domestic and Social Engagements, there is generally a presumption against an intention to create legal relations. For instance, in **Balfour v. Balfour**, an agreement between a husband and wife for a monthly allowance was not considered a contract because the parties did not intend legal consequences. This presumption can be rebutted, especially where there is a "**strained relationship**" between the parties, as illustrated in **Merritt v. Merritt**.
In Commercial Agreements, there is typically a presumption that parties intend to create legal relations. The burden to prove otherwise is heavy. Promises that are merely "mere puff" or "exaggeration" without serious intent are not actionable.

Capacity: Parties entering into a contract must have the legal capacity to do so. The law protects certain vulnerable groups who may lack full contractual capacity:
Minors: In Nigeria, largely following English law, the age of majority for contractual capacity is 21. Contracts entered into by infants are generally **voidable** at their option, meaning they can choose to repudiate them, unless they are for **necessities**. For necessities, an infant is obliged to pay a reasonable price, as per **Peters v. Fleming** and Section 2(1) of the Sale of Goods Act (SGA) 1893. However, contracts for loans or unnecessary goods are absolutely **void** for minors.
Illiterate Persons: Individuals who cannot read or write, particularly in the language of the contract, are protected by specific laws like **Illiterate Protection Laws in Nigeria**. The law places duties on the writer of such a document to ensure the illiterate person understands the terms before signing, to protect them from fraud.

Lunatics: Contracts for necessities with a mentally disordered person are binding, and they must pay a reasonable price. For other contracts, if the other party was aware of their mental incapacity, the contract is voidable; if unaware, it may be considered valid.
Drunkards: A contract entered into by a drunken person is **voidable** at their option when sober, provided their counterpart was aware of their intoxication. Similar to lunatics, they are obligated to pay a reasonable sum for necessities.

In conclusion, the efficacy of a contract is dependent on the simultaneous presence and interrelation of all these elements. As the quote rightly implies, each element is "autonomous and equal" in its criticality; the absence of even one can render an agreement legally impotent, preventing it from being recognized and enforced as a valid contract. The entire legal framework of contract formation is built upon the premise that these components must collectively exist for a binding agreement to "come into existence".

Question 6

“Consensus ad idem is germane to any contract which will be enforceable by law. Thus, ‘one thing’ is common to all these transactions and that is the existence of an agreement which will enable the enforcement of rights and obligations between the parties.’’
Shonubi v Onafeko (2003) 12 NWLR pt. 1334, 254 at p.257.
Explain the above statement and support your answer with the aid of decided cases.

Answer

The statement, "Consensus ad idem is germane to any contract which will be enforceable by law. Thus, ‘one thing’ is common to all these transactions and that is the existence of an agreement which will enable the enforcement of rights and obligations between the parties," as highlighted by **Shonubi v Onafeko**, profoundly encapsulates a core principle of contract law: the **necessity of a meeting of minds** for a legally binding agreement to exist and be enforceable.

Consensus ad idem, literally meaning **agreement as to the same thing**, signifies that for a contract to be valid, both parties must have a mutual understanding and agreement on the **essential terms and conditions** of the agreement. This shared understanding ensures that their intentions and expectations align, forming the bedrock upon which reciprocal legal obligations can arise and be enforced. The absence of consensus ad idem means that the parties are not "id idem," and consequently, no valid contract is formed.

The **Supreme Court of Nigeria in B.F.I GROUP v. BUREAU OF PUBLIC ENTERPRISES** comprehensively defined a contract as "**an agreement between two or more parties which creates reciprocal legal obligation or obligations to do or not to do a particular thing**". This judgment further emphasized that "**For a valid contract to be formed, there must be**

mutuality of purpose and intention. The two or more minds must meet at the same point, event or incidents. They must be saying the same thing at the same time. They must not be saying different things at different times". The court deemed that meeting of minds as the "**most crucial and overriding factor or determinant in the law of contract**". This principle underpins the idea that while all contracts are agreements, not all agreements are contracts, because an agreement only becomes a contract when it fulfills all necessary legal requirements, with consensus ad idem being paramount.

The concept of consensus ad idem is intrinsically linked to the fundamental elements of contract formation, particularly offer and acceptance. An offer must be a definite proposal with a clear willingness to be bound, and it must be **precise and unequivocal, giving no room for speculation or conjecture**. Acceptance must then be an "**absolute and unqualified**" assent to the exact terms of that offer, without any variation. It is the **reciprocal act or action of the offeree to an offer in which he indicates his agreement to the terms of the offer as conveyed to him by the offeror**. This precise alignment of offer and acceptance creates the consensus ad idem.

Several decided cases vividly illustrate the importance of consensus ad idem by demonstrating when it is present and when its absence renders an agreement unenforceable:

In **Nigerian Port authorities LTD. V Lotus Plastic & Anor**, the Supreme Court affirmed that "**parties are free to negotiate the terms of their relationship**," underscoring that when parties genuinely agree on terms through negotiation, a mutual understanding exists. The notion that parties determine the terms of their agreement is supported by the fact that the courts **do not write contracts, instead the parties to an agreement besides the terms of the agreement**.

In **Tinn v. Hofman & Co**., two parties sent identical offers to each other simultaneously, unaware of the other's offer. The court held that no contract was formed because there was "**no acceptance, only two offers**". This outcome was due to the lack of meeting of minds, as "**exchanging offers made on the other side in ignorance of the promise or offer made on the other side neither of them can be construed as an acceptance of the offer**".
The case of **Hyde v. Wrench** demonstrates that a counter-offer destroys the original offer, preventing consensus ad idem from forming on the initial terms. When the plaintiff responded to an offer to sell an estate for £1,000 with a proposal to buy for £950, it was deemed a counter-offer. His subsequent attempt to accept the original £1,000 offer was invalid because the original offer was no longer open; there was "**no obligation whatsoever between the parties**" as their minds had not met on a consistent set of terms.
An acceptance made subject to contract or other conditions does not create a binding contract until the condition is met, as seen in **Cohen v. Nessadale** and **Maja Jnr. V. U.A.C**.. Such

conditional statements indicate that the parties' minds have not yet fully met on all the necessary terms to form a final, binding agreement.
A person cannot accept an offer if they are unaware of its existence as **whoever is not aware of the existence of an offer and or its details cannot be said to have accepted the offer.** This underscores that for minds to meet, there must be knowledge of the proposition being accepted.

In essence, consensus ad idem is the **mutual understanding and agreement** that gives legal life to a contract, enabling the enforcement of rights and obligations. Without it, an agreement remains a mere arrangement without legal enforceability, as the parties' intentions do not align sufficiently to create a binding legal relationship.

Question 7

"It is the element of acceptance that underscores the bilateral nature of contract."
In view of the above assertion, discuss the following modes of acceptance:
(a) by the conduct of the parties
(b) by their words
(c) by documents that have passed between them
(d) by post

Answer
The statement, "It is the element of acceptance that underscores the bilateral nature of contract," powerfully conveys that acceptance is not merely a formality but a critical component that establishes the reciprocal obligations and mutual commitment characteristic of a bilateral contract.

A bilateral contract is formed when two parties exchange promises. Acceptance, in this context, signifies the offeree's agreement to the offeror's terms, thereby creating a mutual understanding and binding agreement. Without a valid acceptance, there is no meeting of minds (consensus ad idem), which is the **most crucial and overriding factor or determinant in the law of contract**. As stated in **B.F.I GROUP v. BUREAU OF PUBLIC ENTERPRISES (2008),** a contract requires "**mutuality of purpose and intention**" where "**The two or more minds must meet at the same point, event or incidents. They must be saying the same thing at the same time**".

Niki Tobi J.C.A. in **Orient Bank v. Bilante Intl.** defined acceptance as "**a reciprocal act or action from the offeree to the offeror in which he indicates his agreement to the terms of the offer as conveyed to him by the offeror**". This highlights that acceptance is the compliance of the offeree with the offer's terms, solidifying the agreement and moving it beyond a mere proposal.

Acceptance must be a **final expression of assent to the terms of the offer.** It must be **absolute and unqualified**, **plain, unequivocal, unconditional and without variance of any sort**. Crucially, acceptance must be **communicated to the offeror**. Mental or internal acceptance is insufficient; there must be an external manifestation of assent.
The various modes of acceptance demonstrate how this essential meeting of minds is achieved:

By Conduct of the Parties

Acceptance can be inferred from the actions or conduct of the parties involved, meaning if their actions suggest an agreement has been reached, acceptance can be deemed to have occurred. For an acceptance by conduct to be proper, it must be clear that the offeree performed the act with the **intention of accepting the offer**.
The case of **Carlill v. Carbolic Smoke Ball Co.** illustrates acceptance by conduct in a unilateral contract. The defendant company offered a reward to anyone who used their smoke ball and still contracted influenza. The plaintiff's purchase and use of the product as advertised was held to constitute acceptance of the offer. This case also demonstrates that communication of acceptance can sometimes be implicitly waived in unilateral contracts.
In **Major Oni v. Communication Associates**, the plaintiff offered to lease flats to the defendants. When the defendants modified the terms to include air-conditioners, the plaintiff immediately installed them. The court held that the plaintiff's conduct of installing the air-conditioners constituted acceptance of the defendant's counter-offer. The court focused on what a "**reasonable person would infer from the conduct of the parties**," rather than their subjective intentions.

By Their Words

Acceptance can be expressed through verbal communication. This includes spoken words during a conversation or a telephone call where both parties explicitly agree to the contract's terms.
The case of **Entores Ltd v. Miles Far East Corporation** provides guidance on acceptance by words, holding that when parties communicate orally, acceptance is generally **effective when it is received by the offeror**. This emphasizes that acceptance must be communicated directly and clearly expressed.

By Documents That Have Passed Between Them

Acceptance can be evidenced by the exchange of documents between the parties. This includes signed contracts, proposals, or other written agreements that clearly demonstrate the intention to be legally bound by the outlined terms.

By Post

Acceptance by post, known as the postal rule, is a traditional legal principle stating that acceptance occurs when a **properly addressed and stamped acceptance letter is posted**. This mode is effective upon posting, even if the letter has not yet been received by the offeror.
The landmark case of **Adams v. Lindsell** first established the postal rule, holding that acceptance is **effective upon posting**, regardless of when it is received by the offeror. The rationale was to prevent an "ad infinitum" loop where parties would endlessly wait for confirmation of receipt.
This case of **Household Fire Insurance Co. v. Grant** provided more concrete reasons for the postal rule, arguing that the post office acts as a common agent for both parties, and that the contract is complete when the letter is posted, as no other act is needed to bring it into existence. It also noted that the offeror is free to make it a term of the offer that acceptance is only valid upon receipt, and that the rule is the most convenient and prevents fraud and delay in commercial transactions.

Despite its general application, the postal rule does not apply in certain situations, such as when:
The offer's terms expressly or implicitly indicate that acceptance must reach the offeror.
Applying the rule would lead to manifest inconvenience and absurdity.
The letter of acceptance is wrongly addressed or inadequately stamped.
The letter was not properly posted for example, if it was handed to a postman not authorized to receive letters.

In summary, acceptance, through conduct, words, documents, or post, is the mechanism that transforms an offer into a binding agreement. Each mode, when validly exercised, ensures the meeting of minds necessary for a contract to be legally enforceable and for rights and obligations to be created between the parties.

Question 8

"…once the consideration is of some value in the eye of the law, the courts have no jurisdiction to determine whether it is adequate or inadequate."- Gaji v Paye (2003) FWLR pt. 163 p.1

Answer

The statement, "once the consideration is of some value in the eye of the law, the courts have no jurisdiction to determine whether it is adequate or inadequate", as quoted from Gaji v Paye (2003) FWLR pt. 163 p.1 and also backed by **Faloughi v Faloughi**, encapsulates a fundamental principle of contract law regarding consideration.

Consideration is a vital element of every contractual agreement, and generally, without it, a contract cannot be valid, unless it is a contract under seal. **Lord Lush J.** in **Curie v Misa** comprehensively defined valuable consideration as consisting of "**either in some right, interest,**

profit or benefit according to one party or some forbearance, detriment, loss of responsibility, given suffered or undertaken by the other". In its simplest sense, it is an **inducement given to enter into a contract** that makes the agreement enforceable by the courts.

The core of the quoted statement lies in the distinction between **sufficiency** and **adequacy** of consideration:
Sufficiency of Consideration: For consideration to be deemed valuable in the eyes of the law, it needs to be "sufficient", meaning it must confer **some sort of benefit to the promisor or some sort of detriment to the promisee**. This aligns with the doctrine of **Quid Pro Quo** (something for something).

Adequacy of Consideration: However, the law generally holds that consideration does not need to be "adequate". This means courts are not concerned with the actual value or worth of the consideration. The principle is that parties are free to negotiate and agree on the terms of their bargain, and the court will not interfere to determine if the exchange was fair in a subjective sense.

In **Chappel v Nestle, Lord Somervell** stated that "**a contracting party can stipulate for what consideration he chooses. A peppercorn does not cease to be a good consideration if it is established that the promisee does not like the pepper and throws away the corn**". This vividly illustrates that even a trivial item can constitute valid consideration if it is what the parties agreed upon.
Similarly, in **Thomas v Thomas**, the court emphasized that "**the court does not declare a contract invalid simply because one party got a better bargain than the other**".

The principle that courts have no jurisdiction to determine adequacy as long as there is **some sort of value** was finally laid to rest by **KAGLO JCA in Faloughi v Faloughi.** This case also highlighted that **natural love or affection** is not considered a true or real consideration because it lacks estimable value.
It is important to note that this principle will hold true in the absence of vitiating factors such as **fraud, duress, or misrepresentation.** If such elements are present, the contract may be challenged despite the presence of some value.

This emphasis on sufficiency over adequacy also distinguishes valid consideration from various forms of invalid consideration. For instance, a **gratuitous promise** (where one party fails to furnish consideration in return for a promise) is generally not legally binding. Similarly, if **consideration is furnished by a third party** and not the plaintiff, the plaintiff generally cannot enforce the promise due to the doctrine of privity of contract. These situations demonstrate that while courts do not assess the amount of value, they do require the presence of legally recognized value moving from the promisee to enforce a contract.

Therefore, the statement implies that as long as there is something (no matter how small or seemingly insignificant) that both parties have agreed to exchange as part of their bargain, and it holds some economic or legal benefit/detriment, the courts will generally uphold it, reflecting the principle of freedom of contract.

Question 9

With the aid of decided cases, discuss comprehensively the concept of Cross-offer.

Answer

The concept of a cross-offer is a situation in contract law where two parties make identical offers to each other, but do so in ignorance of the other's offer. In such a scenario, no contract is formed because there is no acceptance of an offer; instead, there are merely two identical offers.

A cross-offer occurs when an offer is made to another party in **ignorance that the offeree has already made an initial offer of the same facts, element, or condition to the offeror**. It happens when two offers, identical in terms, are sent by two parties to each other, for example, by post or any other means, and these offers “cross" en route. In this instance, there is no contract, as only two identical offers exist, with no corresponding acceptance. For a contract to emerge, there must be an offer by one party to the other, and the other party must react to that offer by indicating their acceptance. This fundamental requirement highlights the need for a meeting of minds or consensus ad idem.

The core reason why cross-offers do not form a valid contract is the absence of mutual assent (acceptance). While both parties express a willingness to contract on specific terms, they do so independently and without knowledge of the other's offer. Therefore, neither offer can be construed as an acceptance of the other. For a contract to be made, there must be **two assenting minds, the parties agreeing in opinion and one having promised in consideration of the promise of the other; there is an exchange of promises**. Exchanging offers made in ignorance of the other side's offer is not the same thing.

It is important to differentiate a cross-offer from a counter-offer. A counter-offer is an invalid form of acceptance that arises when the offeree introduces a **variation to the terms of the initial offer**. This new proposal, the counter-offer, effectively destroys the original offer, making it unavailable for acceptance. A cross-offer, however, involves two identical offers made simultaneously and without knowledge of each other, rather than a response that varies the terms of an existing offer.

The classic case of **Tinns v. Holfman** illustrate the concept of cross-offers. In this case, Mr. Hoffman wrote to Mr. Tinn offering to sell 800 tons of iron at 69 shillings per ton and requested a reply by post. On the same day, Mr. Tinn, unaware of Hoffman's offer, also wrote to Mr. Hoffman offering to buy the iron on similar terms. The letters "crossed in the post".
The court determined that **no contract existed** between Mr. Tinn and Mr. Hoffman. The offers were made simultaneously and without each other's knowledge, meaning there was no communication that constituted an offer and acceptance. **Blackburn J.** clarified that while there is an exchange of promises in a contract, "**exchanging offers would, upon principle, be at all the same thing**".

In conclusion, a cross-offer, while appearing to have mutual intent, fundamentally lacks the necessary element of acceptance because neither party is responding to the other's offer. This prevents the formation of a legally binding contract, as there is no true "meeting of the minds".

Question 10

By its very nature, there is no limit to the number of people an offer can be made to. But a contract comes into existence only between the offeror and the person(s) responding positively to the offer by way of acceptance.
Per Bowen, L.J., in Carlill v Carbolic Smoke Ball co.
In line with the above assertion, compare and contrast offer and invitation to treat.

Answer

An offer is a fundamental element in the formation of a contract. It is defined as **an expression of willingness to contract on specific terms**, made by one party (the offeror) to another (the offeree). For a proposal to constitute a valid offer, it must be a **definite promise to be bound,** provided that certain specified terms are accepted. The offeror must have **completed his share in the formation of a contract** by unequivocally declaring his readiness to undertake an obligation upon certain conditions, leaving to the offeree the option of acceptance or refusal. An offer must be **precise, unequivocal, unambiguous, and clear in terms of intent**, giving no room for speculation. It must also be communicated to the offeree.

The scope of an offer is broad. As stated, "By its very nature, there is no limit to the number of people an offer can be made to, but it is clear that a contract comes into existence only between the offer and the person(s) responding to the offer and accepting it". This principle was famously demonstrated in **Carlill v. Carbolic Smoke Ball Co**. In this landmark case, Bowen L.J. clarified that an offer can indeed be made "**to all the world**," and it will "**ripen into a contract with anybody**" who performs the specified condition. Thus, while the offer may be universal, the resulting contract is formed only with that "**limited portion of the public who come forward and perform the condition on the faith of the advertisement**". Offers can be made orally, in

writing, or even implicitly through conduct, such as a bus stopping at a bus-stop to pick up passengers.

In contrast, an invitation to treat is **not an offer** that can be accepted to form a contract. Instead, it is a **preliminary move in negotiations**, acting as an **invitation to negotiate**, an invitation to make an offer, or an invitation to "**chaffer**". It is a preliminary stage where one party invites another party to make an offer.

Some examples of invitations to treat include:
Auctions: An auctioneer's request for a bid is an invitation to treat; the bid itself constitutes the offer, and acceptance occurs when the auctioneer's hammer falls.
Display of Goods: Goods displayed in shop windows with price tags or on shelves in a self-service store are generally considered invitations to treat. In such cases, the customer makes the offer when presenting the goods at the cash desk, and the shopkeeper accepts or rejects it. This was affirmed in cases of **Fisher v. Bell** and **Pharmaceutical Society of Great Britain v. Boots Cash Chemist**.

Advertisements: While some advertisements can be offers especially those for unilateral contracts, as seen in **Carlill v. Carbolic Smoke Ball Co.,** most are generally invitations to treat. This is particularly true for **bilateral advertisements** which are seen as leading to further bargaining.
Invitations to Tender: When a party advertises for tenders, this is an invitation to treat, not an offer. The tenders submitted by contractors or suppliers are the actual offers, and acceptance occurs when the advertiser selects one or more of these tenders.

The key distinctions between an offer and an invitation to treat lie in their legal effect and the stage of negotiation they represent. An offer is a **definite promise to be bound** upon acceptance, and once accepted, it forms a legally binding contract. In contrast, an invitation to treat is **not capable of acceptance** to create a contract. It merely invites others to make offers.
An offer expresses a clear intention by the offeror to be bound by specified terms. An invitation to treat is a mere declaration of negotiations, indicating a willingness to enter into negotiations rather than an immediate commitment to a contract.
An offer must be precise, unequivocal, and give no room for speculation. It is the final step by the offeror, leaving only acceptance or refusal to the offeree. An invitation to treat, on the other hand, is characterized by wording that is not conclusive, and it is preliminary to the real offer, often leading to further bargaining.
For a contract to be enforceable, there must be a meeting of minds (consensus ad idem), where parties share a mutual understanding of the essential terms. An offer, when accepted, directly achieves this. An invitation to treat, by itself, does not establish this meeting of minds; it is a step towards initiating the process that might eventually lead to it. The absence of a meeting of minds

is why scenarios like cross-offers where two identical offers cross in ignorance of each other, as in **Tinns v. Hoffman & Co.** do not form a contract, as there is no acceptance.

In essence, while both concepts are part of the negotiation process, an offer is a commitment awaiting acceptance, whereas an invitation to treat is an open-ended communication that invites offers from others.

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